

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: CRIMINAL TERM: PART 30

-----X  
THE PEOPLE OF THE STATE OF NEW YORK :Indictment  
:No. 63083C-2004  
-against- :  
:RAPHAEL RODRIGUEZ, :ASLT2  
:Defendant. :Plea  
-----X

851 Grand Concourse  
Bronx, New York

September 11, 2006

B E F O R E:

HONORABLE WILLIAM MOGULESCU,  
Supreme Court Justice

A P P E A R A N C E S:

ROBERT T. JOHNSON, ESQ.  
District Attorney Bronx County  
BY: NINA CARLOW, ESQ.  
Assistant District Attorney

THE BRONX DEFENDERS  
Attorneys for Defendant  
BY: AMY GALLICCHIO, ESQ.

\* \* \*

BONNIE DUNEFSKY  
Senior Court Reporter

## Proceedings

1 THE CLERK: On the motion calendar,  
2 Raphael Rodriguez, numbers 18, 19, 20, 21 and 22 and  
3 23, on the trial calendar, numbers 29, 34, 36, also  
4 38, 39, 40 and also number 25. Defendant produced.

5 MS. GALLICCHIO: Bronx Defenders by Amy  
6 Gallicchio.

7 MS. CARLOW: Nina Carlow for the Office of  
8 the District Attorney appearing for ADA Allen Karen.

9 THE COURT: Want to come up, please?

10 (Whereupon, a discussion was held off the  
11 record between the Court and counsel.)

12 THE DEFENDANT: Your Honor --

13 THE COURT: You should speak to  
14 Ms. Gallicchio first. Yes, you may speak.

15 THE DEFENDANT: First of all, as you know,  
16 I understand -- I have done jail cases. I understand  
17 courtroom. Several times, black eye, broken legs,  
18 arms, you know what I'm saying? You know, my thing is  
19 this. I just got my life back, and first thing, you  
20 know what I'm saying, I know is that I'm getting break  
21 right now, whatever, only thing I'm asking for is my  
22 life back. I'm doing a lot, man, you know, I'm  
23 willing to take time served. I just got off parole.  
24 I just maxed out. I spent my whole life, you know  
25 what I'm saying, in corrections. You know what I'm

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1 saying? The only thing I'm asking for is a chance.

2 THE COURT: I don't know that that's going  
3 to be a possibility, Mr. Rodriguez. You may have to  
4 take your chances. I mean that's -- you know, that's  
5 where we stand. We may have to litigate.

6 THE DEFENDANT: So can I get a three flat  
7 right now?

8 (Whereupon, a discussion was held off the  
9 record between the Court and counsel.)

10 THE COURT: With a view towards disposition  
11 the People are moving to consolidate indictments  
12 23783C of '05 with 34177C of '05?

13 MS. CARLOW: That is correct, your Honor.

14 THE COURT: So the count that he's going to  
15 plead guilty to is on 34177C; is that right?

16 MS. CARLOW: That is correct.

17 THE COURT: That would be the February 4,  
18 2002, Ms. Gallicchio.

19 MS. GALLICCHIO: Yes, that's correct.

20 THE COURT: On that, on the consolidated  
21 indictment you have an application for Mr. Rodriguez  
22 to plead guilty to attempted assault in the second  
23 degree?

24 MS. GALLICCHIO: Yes, your Honor.

25 THE COURT: And that's under the second

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1 count of what had been indictment 34177C; is that  
2 right?

3 MS. GALLICCHIO: Correct.

4 THE COURT: And also, with a view towards  
5 disposition, on 3239 of '04 the defendant -- the  
6 People, with a view towards disposition, are  
7 dismissing the counts of robbery in the first degree  
8 and robbery in the second degree; is that right?

9 MS. CARLOW: That's right, your Honor.

10 THE COURT: And Ms. Gallicchio, your client  
11 has an application to plead guilty now to the crime of  
12 grand larceny in the fourth degree; is that right?

13 MS. GALLICCHIO: Yes, that's correct.

14 THE COURT: Mr. Rodriguez, is  
15 Ms. Gallicchio your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you fully satisfied with  
18 her work in this case?

19 THE DEFENDANT: Yes.

20 THE COURT: These cases, have you  
21 completely discussed these cases with her?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you wish to plead guilty to  
24 two separate counts and what are now the two cases,  
25 one being the count of attempted assault in the third

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1 degree and the other being grand larceny in the fourth  
2 degree; is that what you wish to do?

3 THE DEFENDANT: Yes.

4 THE COURT: Before I accept your guilty  
5 pleas I must advise you of the very valuable and  
6 important rights you waive or give up when you plead  
7 guilty in a criminal case.

8 So far you've entered a plea of not guilty  
9 in each of these cases, and if you keep your plea at  
10 not guilty you would have a jury trial. At that jury  
11 trial you would be protected by the presumption of  
12 innocence and the burden would be on the prosecution  
13 to prove your guilt beyond a reasonable doubt to the  
14 full satisfaction of all 12 people on the jury. If  
15 even one juror had a reasonable doubt about your  
16 guilt, you could not be convicted.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: At the trial you would have  
20 the right to confront the witnesses against you. That  
21 means that people would come into court, they would  
22 testify in open court and they could be cross-examined  
23 by your attorney.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: At the trial you would have  
2 the right to call witnesses and introduce exhibits if  
3 you wished to do so, but you wouldn't have to do that,  
4 you wouldn't have to do anything because the burden  
5 would always be on the People to prove your guilt  
6 beyond a reasonable doubt. You would never have any  
7 burden whatsoever to prove that you were not guilty.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: You would also at each of these  
11 trials have the absolute right to testify if you chose  
12 to do so, and the decision whether or not to testify  
13 would be your choice.

14 Ms. Gallicchio, would you come up for a  
15 moment, please?

16 Would be your choice. Obviously you'd be  
17 able to discuss with Ms. Gallicchio or anybody else  
18 whether or not you wanted to testify, but in the final  
19 analysis it would be up to you to decide whether you  
20 wanted to or not. If you decided for any reason that  
21 you didn't wish to do it, it couldn't be held against  
22 you at all. No negative or adverse inference could be  
23 drawn against you because you have an absolute right  
24 to remain silent, to say nothing.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: You also have a right against  
3 self-incrimination. Nobody could ever force you or  
4 threaten you or coerce you in any way to get you to  
5 admit that you committed these crimes.

6 Is that understood?

7 THE DEFENDANT: Yes.

8 THE COURT: And when you plead guilty, you  
9 give all that up, a jury trial, where you would be  
10 protected by the presumption of innocence, you give up  
11 your right to confront the witnesses against you, you  
12 give up your right to call witnesses and introduce  
13 exhibits, you give up your right to testify, as well  
14 as your right to remain silent, and a guilty plea  
15 waives or gives up your right against  
16 self-incrimination. There won't be a trial in either  
17 of these cases. Pleading guilty is exactly the same  
18 as being convicted after trial.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Understanding all of those  
22 things, do you still wish to plead guilty?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, in addition and quite  
25 separately, you have a right to appeal any conviction

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1 from this Court to a higher court, to the Appellate  
2 Division. That's a right that you have even when you  
3 plead guilty, and if you cannot afford a lawyer to do  
4 your appeal, a lawyer will be assigned to you to write  
5 the brief and argue the appeal, but that right, like  
6 the other rights, is a right that could be waived or  
7 given up, and as part of this plea bargain to resolve  
8 these cases, you will be waiving or giving up your  
9 right to appeal.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And understanding that, do you  
13 still wish to plead guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: There is before you now two  
16 written waivers which just lay out exactly what I just  
17 told you as to your waiver of your right to appeal.  
18 Just if you just want to take a moment to review them  
19 with Ms. Gallicchio.

20 MS. CARLOW: Your Honor, if I could just  
21 interject. I know that your written waiver of right  
22 to appeal addresses the 30.30 issue.

23 THE COURT: I would --

24 MS. CARLOW: Okay, very good.

25 THE COURT: I'm going to get to that.



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1 MS. CARLOW: Thank you.

2 MS. GALLICCHIO: So we're going to  
3 eliminate the constitutional speedy trial claim.

4 THE COURT: Well, he's waiving his right to  
5 appeal.

6 MS. GALLICCHIO: Yes.

7 THE COURT: Yes. All right. I would like  
8 you -- Mr. Rodriguez, you agree that you waive your  
9 right to appeal; is that right?

10 THE DEFENDANT: Yes.

11 THE COURT: I'm going to ask you, if you  
12 could -- so he could sign the waivers, please. Okay?

13 MS. GALLICCHIO: Yes.

14 THE COURT: Mr. Rodriguez and  
15 Ms. Gallicchio have both signed in open court the  
16 waiver of right to appeal. I accept the waiver in  
17 each case.

18 Now, also, there are certain motions that  
19 are pending in these matters, Mr. Rodriguez. These  
20 guilty pleas mean that those motions will be withdrawn  
21 as mute. You understand that? Yes?

22 THE DEFENDANT: Yes.

23 THE COURT: You still wish to plead guilty,  
24 right?

25 (Whereupon, a discussion was held off the

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1 record between defense counsel and defendant.)

2 THE COURT: And as part of this agreement,  
3 all these misdemeanors are going to be dismissed as  
4 covered; is that right?

5 MS. CARLOW: Yes, they are absolutely  
6 dismissed.

7 THE COURT: Mr. Rodriguez, all the  
8 misdemeanors are going to be dismissed today as part  
9 of this plea agreement.

10 (Whereupon, a discussion was held off the  
11 record between defense counsel and defendant.)

12 THE COURT: Okay?

13 THE DEFENDANT: Yes.

14 THE COURT: You're pleading guilty to two  
15 class E felonies. Each is punishable by up to four  
16 years in prison. I am going to sentence you to two to  
17 four, run those sentences together, concurrently with  
18 each other.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: These are felony convictions,  
22 non-violent felonies. If you're again convicted of a  
23 felony within 10 years, penal law felony within 10  
24 years from the day of sentence in this case, not  
25 counting any time in jail or in prison on this case or

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1 any other predicate felony, you will be subject to  
2 harsher punishment.

3 Is that understood?

4 THE DEFENDANT: Yes.

5 THE COURT: If you are not a citizen of the  
6 United States, these convictions will be a basis for  
7 your deportation.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Understanding those things, do  
11 you still wish to plead guilty?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you pleading freely and  
14 voluntarily because you are in fact guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: Has anybody forced you or  
17 threatened you or coerced you in any way to get you to  
18 plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Now, on the assault indictment  
21 it's charged that on or about February 4, 2005 here in  
22 the Bronx at a correctional institution out at Rikers  
23 Island -- no, I'm sorry -- inside, this was inside of  
24 215 East 161st Street here in the Bronx you, with the  
25 intent to cause physical injury to another person, did

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1 cause that injury by punching and kicking that person.

2 Are those charges true?

3 THE DEFENDANT: Yes.

4 THE COURT: Caused serious physical -- I'm  
5 sorry -- to a correction officer, you did cause injury  
6 to that correction officer, physical injury to the  
7 correction officer.

8 Those charges are true; is that right,  
9 Mr. Rodriguez?

10 THE DEFENDANT: Yes.

11 THE COURT: And on the other indictment,  
12 3239 of 2004 it's charged that on or about June 27,  
13 2004 inside of 1478 White Plains Road here in the  
14 Bronx what you did is you stole some property from the  
15 person of another, from somebody else, you took some  
16 money, a watch, I'm sorry, money and a watch from  
17 another person; is that right?

18 THE DEFENDANT: Yes.

19 THE COURT: And you made a small threat to  
20 take it, correct?

21 THE DEFENDANT: Yes.

22 THE COURT: Are the pleas acceptable to  
23 the People?

24 MS. CARLOW: Yes, they are, your Honor.

25 THE COURT: All right. Joe, would you take

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1 those two pleas?

2 THE CLERK: Raphael Rodriguez, you now  
3 withdraw your previously entered plea on indictment  
4 34177C of '05 and now plead guilty to the crime of  
5 attempted assault in the second degree, that plea is  
6 to cover that entire indictment, is that what you're  
7 doing?

8 THE DEFENDANT: Yes.

9 THE CLERK: And Raphael Rodriguez, do you  
10 now withdraw your not guilty plea on 3239 of 2004 and  
11 now plead guilty to the crime of grand larceny in the  
12 fourth degree, that plea is to cover the entire  
13 indictment; is that what you're doing, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Now, as a result of  
16 these pleas, the four misdemeanor dockets, docket  
17 2005BX038083, 2005BX010265, 2005BX005470 and 6308C of  
18 '04, those dockets are dismissed as covered; is that  
19 right, Ms. Carlow?

20 MS. CARLOW: That is correct.

21 THE COURT: Dismissed as covered. The  
22 pending motions are withdrawn as mute; is that right,  
23 Ms. Gallicchio?

24 MS. GALLICCHIO: Yes.

25 THE COURT: Now what we need to get is the

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1 date for sentence. How about October 26?

2 MS. GALLICCHIO: Judge, is there any chance  
3 you would consider going through the holiday into the  
4 new year? Not at this time.

5 THE COURT: Right.

6 MS. GALLICCHIO: Okay.

7 THE COURT: Let's do it one step at a time.

8 MS. GALLICCHIO: The only reason I'm  
9 asking that -- you know, what I'm saying -- okay, I'll  
10 speak with my client.

11 THE COURT: October 26. He has a blue card  
12 on 34177C, yes, as well as 3229. I just want to make  
13 sure you continue to get the jail credit on both  
14 cases. The other cards are essentially dismissed as  
15 far as corrections is concerned.

16 MS. CARLOW: So the defendant is remanded?

17 THE COURT: He's at least remanded on one  
18 of them.

19 \* \* \*

20 The foregoing is hereby certified to be a true and  
21 accurate transcript of the proceedings as transcribed  
22 from the stenographic notes.

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BONNIE DUNEFSKY  
Senior Court Reporter